

ORIGINAL



0000136337

BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

RECEIVED

GARY PIERCE-Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

2012 MAY -4 A 9:59

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

GEORGE BIEN-WILLNER, for
GLENDALE & 27TH
INVESTMENTS,
LLC

DOCKET NO. T-01051B-10-0200

COMPLAINANT,

COMPLAINANT'S RESPONSE TO QWEST'S
MOTION TO DISMISS

V.

Arizona Corporation Commission

DOCKETED

QWEST CORPORATION,

MAY 04 2012

RESPONDENT.

DOCKETED BY

JM

Complainant George Bien-Wilner, for Glendale & 27th Investments, LLC, hereby responds to Respondent Qwest Corporation's Motion to Dismiss, which Qwest filed with the Commission on March 28, 2012. It is shocking that Qwest would file a motion to dismiss on a complaint that is substantially similar to the prior complaint filed by Complainant, which Qwest answered and did not move to dismiss. Thus, many (if not all) of Qwest's arguments have been waived and should not be considered. Also, Qwest admits that it "does not ask that the matters stated in paragraphs 18-22 [of the Complaint] be dismissed." See Qwest Motion to Dismiss at page 3, lines 8-10. So, even Qwest acknowledges that this case should go forward. For these two reasons and the reasons explained below, Qwest's motion to dismiss is without merit and should be denied; the consumer complaint at issue should be heard and decided on its merits.

1 **RESPONSE TO MOTION TO DISMISS**

2 This is a very straightforward case that involves allegations of Qwest charging the
3 Complainant thousands of dollars for a telephone line he never requested or ordered.
4 Qwest clearly understands Complainant's allegations, and has been able to answer the
5 complaint and respond to discovery. Throughout the complaint process, Qwest has
6 attempted to sidestep its alleged misconduct by ignoring its own billing and account
7 activation procedures and instead focusing on alleged technical deficiencies in the
8 complaint against it. For example, Qwest was unable to clearly answer the Commission
9 staff's inquiries about its billing and account set-up practices, and has failed to produce
10 legible bills to Complainant. In its current motion, Qwest advances a number of
11 groundless arguments; none of Qwest's arguments would justify dismissing the
12 Complaint in whole, let alone in part. Complainant responds more specifically as
13 follows:
14

15 **Qwest Motion to Dismiss Paragraphs 1-2:**

16 These are unsupported, generalized gripes that Qwest has about the Complainant
17 and do not even pretend to offer any reason to dismiss the Complaint. These first two
18 "points" of Qwest's are representative of the failure of the rest of its motion.

19 **Qwest Motion to Dismiss Paragraphs 3-4:**

20 Again, this is Qwest simply bellyaching. In fact, if the Complaint were so
21 confusing and vague, Qwest would not have been able to answer it: but it did answer,
22 because the Complaint is clear. Complainant has pointed out the gross deficiencies in
23 Qwest's ordering and billing processes because they explain how Complainant was
24

1 deceived by Qwest about the services for which it was being charged, which is at the core
2 of this complaint. Furthermore, while Complainant's allegations are far from conclusory,
3 it is true that Complainant has been unable to make more specific allegations (which are
4 not even required) because Qwest either is unwilling to or cannot produce clear billing
5 records, or any internal records of Complainant's order of services at all and has, in fact,
6 admitted that its small business group keeps no such records. In any event, to the extent
7 these allegations could be more specific, they should still be considered. *See* A.A.C.
8 R14-3-109(K) (emphasis added) (In conducting any investigation, inquiry or hearing,
9 neither the Commission nor any officer or employee thereof shall be bound by the
10 technical rules of evidence, and no informality in any proceeding or in the manner of
11 taking of testimony shall invalidate any order . . . by the Commission. Rules of evidence
12 before the Superior Court of the state of Arizona will be generally followed but may be
13 relaxed in the discretion of the Commission or presiding officer when deviation from the
14 technical rules of evidence will aid in ascertaining the facts.) Qwest's paragraphs 3-4
15 likewise offers no reason or request to dismiss any part of the Complaint.
16

17 **Qwest Motion to Dismiss Paragraphs 5-6:**

18 The Commission has broad powers to investigate Qwest's ordering and billing
19 practices on behalf of other Arizona citizens, and should do so. Qwest's resistance to any
20 scrutiny by the Commission is telling, and it has not explained why or how it was
21 allowed to bill for services that Complainant did not order and which were never
22 explained to Complainant (and that its own personnel could not understand, as explained
23 and documented in Complainant's written testimony, which has already been submitted).
24

1 Furthermore, Qwest has admitted that its small business group does not keep written
2 records of customer orders – this alone would have prevented the current dispute (or at
3 least cut it short) and should be of interest to the Commission, as it is highly unusual and
4 troubling, and likely affects other small business customers. Again, Qwest’s points 5 and
5 6 do not offer any reason to dismiss the Complaint, nor do they claim to do so.

6 **Qwest Motion to Dismiss Paragraph 7:**

7 Complainant has explained that Qwest has failed to provide bills that a third party
8 can understand, and Qwest has also failed to provide adequate written records to
9 Complainant. For example, Qwest redacted many documents that it provided to
10 Complainant, and those redacted documents appear to be directly related to
11 Complainant’s claims. Again, this point of Qwest’s does not suggest any type of
12 dismissal. Instead, it highlight’s Qwest’s unwillingness to participate fairly in
13 proceedings before the Commission.
14

15 **Qwest Motion to Dismiss Paragraphs 8-9:**

16 Damages: the Complainant is requesting all forms of damage that the
17 Commission may permit as occasioned by Qwest’s alleged misconduct. These certainly
18 include overcharging for services by including “services” that Complainant was unaware
19 of and never ordered – and Qwest has already provided a partial refund toward that end in
20 the amount of approximately \$810.89 (as alleged in detail in the Complaint, during the
21 time of the wrongful billing related to the partial \$810.89 refund, Qwest was also
22 required to offer other refunds for thousands of dollars for its wrongful and inaccurate
23 billing practices). Complainant respectfully submits that the Commission is far better
24

1 suited than Qwest to determine the proper scope and amount of damages in this case, and
2 there is no requirement that Complainant allege an exact figure for damages at this time.

3 **Qwest Motion to Dismiss Paragraph 10:**

4 Injunctive relief: Complainant is requesting that the Commission enjoin Qwest
5 from continuing to engage in the practices to which it was subject, which is certainly
6 within the Commission's authority.

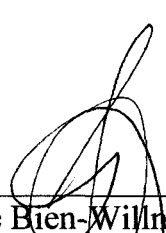
7 **Qwest Motion to Dismiss Paragraph 11:**

8 This is a summary paragraph that has been addressed by the points, above, and
9 also does not support a request for dismissal.

10 **CONCLUSION**

11 In conclusion, Complainant respectfully requests that the Commission deny
12 Qwest's motion to dismiss. In the event that the Commission does not reject Qwest's
13 motion to dismiss, the Complainant respectfully requests oral argument.

14
15
16 DATED this 4th day of May, 2012.

17
18
19 
20 George Bien-Willner
21 Glendale & 27th Investments LLC
22 3641 North 39th Avenue
23 Phoenix, Arizona 85004
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

ORIGINALS filed this
4th day of May, 2012 with:

Arizona Corporation Commission

Copy mailed to:

Norman G. Curtright, Corporate Counsel
Qwest Corporation
20 East Thomas Road-16th Floor
Phoenix, Arizona 85012